

APPEAL NO. 040535
FILED APRIL 26, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 23, 2004. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) compensable injury of _____, does not extend to include a cervical spine injury or depression. The claimant appealed, disputing the extent-of-injury determination and challenging several specific findings of fact. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed.

The claimant attached documents to his appeal, some of which were not admitted into evidence at the hearing. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. See *generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). In determining whether new evidence submitted with an appeal requires remand for further consideration, the Appeals Panel considers whether the evidence came to the knowledge of the party after the hearing, whether it is cumulative of other evidence of record, whether it was not offered at the hearing due to a lack of diligence, and whether it is so material that it would probably result in a different decision. See Texas Workers' Compensation Commission Appeal No. 93536, decided August 12, 1993. Upon our review, we cannot agree that the evidence meets the requirements of newly discovered evidence, in that the claimant did not show that the new evidence submitted for the first time on appeal could not have been obtained prior to the hearing or that its inclusion in the record would probably result in a different decision. The evidence, therefore, does not meet the standard for newly discovered evidence and will not be considered.

It was undisputed that the claimant sustained a compensable injury on _____. The sole issue before the hearing officer was whether the compensable injury included the cervical spine and depression. Conflicting evidence was presented on the disputed issue of the extent of the compensable injury. Although the hearing officer found that the claimant suffers from depression, he specifically found that the compensable injury was not a producing cause of the claimant's depression nor did the claimant's depression naturally result from his work-related compensable injury. The hearing officer was not persuaded that the claimant's job duties were sufficiently repetitive or traumatic to cause a cervical spine injury and further specifically found that the claimant's activities in the course and scope of employment did not aggravate the degenerative conditions of his cervical spine. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have

been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's determination that the compensable injury does not include a cervical spine injury or depression is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer declined to add a carrier waiver issue requested by the claimant regarding the cervical spine condition alleged by the claimant but stated he would allow the evidence to be developed at the CCH regarding what the first written notice consisted of as well as when the dispute was filed. Although the claimant does not appeal the failure to add the requested issue, he does appeal the findings that "the first written notice of the claimed injury gave notice of a forearm/shoulder injury and not a cervical spine injury or a depression injury" and that the "incident details" portion of the document in Claimant's Exhibit No. 1 was not created before September 17, 2001. A review of the record reveals sufficient evidence to support the disputed findings and since there was no appeal of the hearing officer's decision regarding the requested waiver issue, it will not be addressed further.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge